PART II

FORM OF LEGISLATION

Discussion under this part relates to the individual segments of a bill and offers suggestions as to how each of them may be prepared in order to conform to the legal requirements of the Florida Constitution and the rules of the legislative process. For those who are unfamiliar with the format of general bills, a sample general bill is shown on page 26.

TITLE OF BILL

Section 6 of Article III of the Florida Constitution provides in part that:

> Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title [emphasis supplied].

The title, required by the Florida Constitution, is that portion of the bill which serves the purpose of expressing the subject of the bill. A properly prepared title is essential to the validity of the law to be enacted. The title should briefly express the subject of the proposed legislation so that the mere reading of it will indicate the nature of the details which are embodied in the act.

It is not necessary to set forth all the details and provisions of a bill in the title, and a general title is often preferable since it facilitates possible future

amendment of the bill. However, the title must give notice sufficient to reasonably lead an interested person to inquire as to the contents of the bill.

What happens if a bill passes with an insufficient title?

An act is defective to the extent that its scope is broader than the subject of its title. See: Rouleau v. Avrach, 233 So.2d 1 (Fla. 1970). Such an act may be challenged in court, and the court may declare the act to be unconstitutional for failure to comply with Section 6 of Article III of the Florida Constitution. However, such a challenge must be made during the time between the passage of the act and the official adoption of the Florida Statutes, which reenacts as a revision all general acts and cures the imperfections in their titles. See Belcher Oil Co. v. Dade County, 271 So.2d 118 (Fla. 1972).

Two further points are worth noting:

1. This general proposition is not applicable to special acts, which are not reenacted like general laws with each succeeding adoption of the Florida Statutes. See: Rubin v. Sanford, 218 So.2d 177 (Fla. 3d DCA 1969).

2. An imperfect title may be corrected by adoption of the act in the Florida Statutes, even though the act has been adjudicated as inoperative for failure to have a sufficient title. However, in such a case, the act will be operative only from the time of the adoption of the Florida Statutes and not from the date of the original enactment of the bill. See: State ex rel. Badgett v. Lee, 22 So.2d 804

(Fla. 1945), and Thompson v. Intercounty Tel. & Tel. Co., 62 So.2d 16 (Fla. 1952).

Must the title to a resolution comply with the same rules?

No. The title requirements of the Florida Constitution do not relate to the titles of joint resolutions, concurrent resolutions, simple resolutions, or memorials. These pieces of legislation are not "laws" within the meaning of the constitutional requirement. See: Gray v. Winthrop, 156 So. 270 (Fla. 1934).

Are there any particular types of provisions in an act for which notice must or should be given in the title?

Yes. Over the years, a number of acts have been challenged in court for failure to comply with the requirement contained in Section 6 of Article III of the Florida Constitution that the subject of an act be briefly expressed in the title. This case-by-case interpretation of the requirement has necessarily led to the accumulation of a seemingly unrelated list of items the courts have deemed to be too important to be excluded from notice in the title. Given the fact that the courts have repeatedly stated that the title need only disclose the subject and not the object of the act or the matters related to the subject, some of these provisions may seem hard to justify. Nonetheless, review of available case law indicates that the cautious drafter should disclose the existence of the following types of provisions in the title:

1. Any unusual definition; i.e., one that differs from the common meaning of a term.

2. A fee, tax, or assessment.

3. A bond issue.

4. A grant of eminent domain power.

5. An award of attorney's fees.

6. A penalty or forfeiture. This includes notice of a penalty enhancement such as a new reference to s. 775.084, Florida Statutes, and notice of general penalty provisions which apply to the act but which are not included within it.

7. An appropriation.

8. The general subject of a repealed section and any provision restricting the effect of a repeal.

9. A retroactive effect.

10. A future repeal.

11. A referendum.

12. An effective date.

Please keep in mind that this list is not exclusive. It would seem wise, for example, to include notice of an exception included in the act which might have a similar effect to that caused by an unusual definition.

Should a statement of sections to be repealed be included in the title?

Yes. If the sole purpose of a bill is to repeal a present statutory provision, a statement of the subject would be required to comply with Section 6 of Article III of the Florida Constitution. If a bill amends present statutory provisions or adds new provisions, and also provides for the repeal of specific provisions, notice of intention to repeal such provisions should also be included in the title, although failure to do so would probably not be a fatal defect except in a case where the statutes to be repealed are not in conflict with the subject matter of the bill.

Is it necessary that the title disclose in detail all of the provisions contained in the body of the bill?

No. The title need not be an index to the contents of the act. It is not necessary that it delineate in detail the substance of the body of the bill. See: Rouleau v. Avrach, 233 So.2d 1 (Fla. 1970). The primary purpose of the constitutional requirement is to avoid surprise or fraud by fairly apprising the Legislature and the public of the subject of the legislation being enacted. The Legislature is allowed a wide latitude in the enactment of laws, and the courts will strike down a title only when there is a plain case of violating or ignoring the constitutional requirement. See: Farabee v. Board of Trustees, Lee County Law Library, 254 So.2d 1 (Fla. 1971). It is the practice of the House Bill Drafting Service to prepare "general" titles in the case of bills which create new programs

or adopt additional provisions, and, in the case of bills which propose to amend the Florida Statutes, to include a brief phrase with respect to each amendatory section of the bill. Admittedly, this procedure may be overly cautious. The Florida Supreme Court has stated that if amendatory provisions are germane to the general subject of an amended act, it is not necessary that the particulars of such amendatory provisions be referred to in the title. It may be presumed from the very fact of amendment that the old law will be changed in some respect; otherwise, there would be no occasion for an amendment at all.

What if a bill does less than the title indicates?

Occasionally, an amendment to a bill deletes certain provisions and mention of these provisions is inadvertently left in the title. The question arises as to whether the title is defective. This is a subject that most commonly arises with respect to the title (or more likely the "advertisement") of a local bill. Discussion of same may be found in Drafting Local Legislation in Florida. In the case of a general bill, it is probably safe to say that there is little risk in enacting a general bill which does less than is indicated in the title, so long as the title surplusage is of a relatively insignificant nature. On the other hand, if a bill contains less than the title indicates, it will be held to be defective if, in the opinion of the court, the title is so misleading as to motivate passage on the basis of features which are not, in fact, in the bill.

THE ENACTING CLAUSE

Section 6 of Article III of the Florida Constitution provides in part that:

> The enacting clause of every law shall read:
>
> "Be It Enacted by the Legislature of the State of Florida:".

The prescribed enacting clause is a prime essential to the validity of a law.

Resolutions and memorials utilize a "resolving clause" rather than an "enacting clause." A blank numbered line must be left above and below the enacting or resolving clause. (See the sample bills and resolutions in Part IV.)

BODY OF THE BILL

Section 6 of Article III of the Florida Constitution provides in part that:

> No law shall be revised or amended by reference to its title only. Laws to revise or amend shall set out in full the revised or amended act, section, subsection or paragraph of a subsection.

This requirement applies only to amendatory acts, not to bills which seek to establish new programs or additional provisions without reference to the present law. The full meaning of the requirement can be discovered only by a reading of the court cases which have interpreted it. Briefly, it requires that when an amendment is made to present text, the entire text of the portion being

amended must be set forth. Often this means that only a single paragraph need be shown. But if the amendment is to a paragraph or subsection that does not make sense standing alone, the remainder of the subsection or section should be set forth in the bill. In addition, introductory language which precedes a group of subsections or paragraphs or "flush left" material which follows them should be shown whenever any of the subsections or paragraphs is amended. Amendment of the introductory material itself nearly always requires that the following subdivisions be set forth, even though none of them is being amended. The courts will generally hold that the requirement to "set out in full" is satisfied if the statutory enactment is complete and intelligible in itself without the necessity of referring to the Florida Statutes in order to ascertain the meaning of the amendment. However, if the amendatory enactment is not a complete, coherent, and intelligible act, or if it necessitates separate research and analysis of the statute which is being amended, it does not meet the requirements of Section 6 of Article III.

What is the proper format for the body of a bill?

The body of a bill is divided into numbered sections. A bill may contain any number of sections and provisions so long as they are all germane to the single subject expressed in the title. Whenever any question arises as to whether a bill embraces two totally different subjects, it is better to draft separate bills than to include provisions of questionable relationship under a single title.

The body of a bill which does not seek to amend the present law is usually divided into sections and subsections of convenient length.

The body of a bill which does seek to amend the present law contains one or more sections which are made up of two principal parts. The first is the "directory language," an example of which is:

> Section 1. Section 823.02, Florida Statutes, is amended to read:

The second part is the text of the section concerned, with the proposed changes indicated by "coding," an example of which is:

> 823.02 Building bonfires.--Whoever is concerned in causing or making a bonfire within 20 ~~ten~~ rods of any house, ~~or~~ building, or public highway commits ~~shall be guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

What is the significance of the "directory language"?

A clear and accurate directory is essential to each amendatory section of a bill. For a complete discussion of the procedures to be used in composing correct directory statements, see the patterns for directories under AMENDING FLORIDA STATUTES in Part III.

What is the proper way to use the underlining and striking through with hyphens?

The Rules of the two houses require that general bills and joint resolutions which propose to amend existing provisions of the Florida Statutes or the Florida Constitution show the new words to be inserted in the text "underlined" and the words to be deleted "lined through with hyphens." This procedure is commonly referred to as "coding."

In the event the change in language is so general that the use of these procedures would hinder, rather than assist, the understanding of the amendment, it is not necessary to use the coded indicators of words added or deleted; in lieu thereof, a notation similar to the following must be inserted following the "directory" and immediately preceding the affected section of the statutes:

> (Substantial rewording of section. See s. ....., F.S., for present text.)

When such a notation is used, it is underlined.

Although not strictly required by the Rule, it is the practice of the House Bill Drafting Service to use the coded indicators in two other instances. One is when preparing a bill which proposes to amend a general law found in the *Laws of Florida* (session laws) which has not been published in the Florida Statutes. The other is to indicate proposed changes in the section heading of a statute.

It is the practice of the House Bill Drafting Service to use coding in local bills.

Does underlined text come before or after stricken text?

Ordinarily, the underlined text should come before the stricken text. There is no rule on the subject, but it has long been the practice of both houses to observe this arrangement. The result is that the reader has the benefit of seeing the proposed new language first and can then decide whether to read the stricken language or skip over it. If the stricken language comes first, this option is less attractive, and the reader's train of thought may be broken by skipping ahead while mentally connecting the present language and the proposed new text. However, there are occasions when the reverse order is preferred.

What language should be underlined?

Beginning in January 1986, the House adopted a policy calling for the underlining of “all new language.” In short, any language which is not current statutory language is to be underlined. This includes:

-- All language added to a section of the statutes or the Florida Constitution, and all new sections added to the statutes or constitution.

-- All other created text, even though not assigned a specific statute number.

-- The “Substantial rewording...” clause, and all text that follows such a clause, except that if only a subdivision is being substantially reworded, the existing catchline and introductory material are not underlined.

-- All nonstatute text of the type commonly found near the end of a bill, such as sections that simply renumber statute sections, repeal and “review and repeal” sections, appropriation sections, and severability clauses.

The following are **not underlined**:

-- The section number of a bill (e.g., “Section 1.”).

-- The effective date.

-- Court cases cited in “Whereas” clauses.

-- Bills setting a date for a special election for a constitutional amendment.

What is the significance of section headings?

A section heading is commonly called a **"catchline."** This is the descriptive phrase that follows the Florida Statutes section number and precedes the actual substance of the section. The catchline is inserted in the published statute by the Division of Statutory Revision editorial staff, but may also be furnished by the legislative drafter in advance. This section heading or catchline serves a useful purpose in assisting a person to find a particular section quickly. Technically, such a heading, when furnished by the editorial staff, is not a part of the law, but is more in the nature of an editorial aid or device. If furnished by the Legislature, it may be considered by the courts as an aid to interpretation of the section. Its usefulness depends on its accuracy; therefore, when a statute section is amended, its catchline should be amended to conform, if necessary, and when the drafter chooses to supply a catchline for a new section, it should

be chosen with care. It is neither necessary nor desirable that the catchline attempt to summarize the content of the section itself.

What if the section being amended or repealed contains a reference to another section or is itself referred to elsewhere in Florida Statutes?

It is often the case that a bill will seek to amend a section of the statutes which contains a **cross reference** to another statute section, or to amend or repeal a section that is referred to elsewhere in the statutes. The drafter should always consider the impact of such an amendment or repeal on existing cross references. Fortunately, any "hidden references" to a section which is being amended or repealed can be discovered through use of the "Search and Browse" computer program available on the Legislative Intranet.

REPEALS

Section 6 of Article XII of the Florida Constitution provides in part that:

> All laws . . . shall remain in force until they expire by their terms or are repealed.

Some bills consist of nothing more than a statement which repeals present law. In drafting bills which contain amended or created text, it is sometimes necessary to also repeal existing statutes. The drafter must be particularly careful not to overlook current law which, if left on the books, would be in direct

conflict with the new law. Do not create new provisions and then rely on repeal by implication. A repealing section should be set forth which makes specific reference to the conflicting or superseded statutes. This serves to prevent much confusion and difficulty later in interpreting and applying the new law. (As to the technique of drafting specific repeal language, see the discussion on page 67.)

Does the repealed language have to be set forth in the bill?

When repealing a section of the statutes in its entirety, it is not necessary to set forth the text of the section and hyphen through it. Cite the section to be repealed, indicating that it is repealed, as in the following example:

Section 28. Section 198.0919, Florida Statutes, is repealed.

Since no text is set forth to indicate the substance of what is being repealed, an accurate title provision must be included in the title of the bill to give the reader sufficient notice of the effect of the repeal.

With respect to instances in which there is a desire to repeal a subdivision of a section (subsection, paragraph, etc.), it is recommended that such subdivision be set forth in the bill, hyphenated, and characterized as "amended" rather than "repealed."

What about using a “general repealer” clause?

A provision sometimes found in older bills is the so-called "general repealer" which goes something like this: "All laws in conflict with this act are hereby repealed." Sutherland's Statutory Construction makes the following comment about a general repealer clause:

> An express general repealing clause to the effect that all inconsistent enactments are repealed, is in legal contemplation a nullity.

We strongly recommend that the general repealer not be used since it adds nothing to good drafting technique and may cause confusion.

THE EFFECTIVE DATE

Section 9 of Article III of the Florida Constitution provides in part that:

> Each law shall take effect on the sixtieth day after adjournment sine die of the session of the legislature in which enacted or as otherwise provided therein.

An effective date section is not necessary to a properly prepared bill. Indeed, a reading of the constitutional provision implies that to "otherwise provide" an effective date different from the sixtieth day after adjournment is an exceptional case. To the contrary, however, it has become customary over the years to include an effective date in almost every bill. This may be due to the

fact that it is considered desirable to give advance notice that a new law is to take effect on a particular date.

It is generally desirable to defer the effective date of an act to a date some months subsequent to its enactment unless there are compelling reasons for an earlier or immediate effective date. If the effective date is too soon after passage of the bill, it will occur prior to the publication and distribution of the act and may result in confusion.

The House Bill Drafting Service does not observe any "standard" effective dates, though in the past October 1 and July 1 have been considered standard and continue to be the most often used effective dates. If in doubt about setting a specific effective date in a draft, it is advised that you consult the House Bill Drafting Service.

There are certain types of bills for which the choice of an effective date should be given special consideration:

1. Ad valorem taxes Bills dealing with assessment of ad valorem taxes usually take effect January 1.

2. Appropriations Bills which contain an appropriation or other fiscal impact, and bills affecting taxes other than ad valorem taxes, should ordinarily take effect at the beginning of the fiscal year, July 1. (Note that the fiscal year of most local governments begins October 1.)

3. Crimes Bills which create new criminal offenses or which increase the penalties for existing offenses should ordinarily be delayed long enough for the

general public to have the printed text of the law readily available and for law enforcement agencies to prepare for enforcement.

4. Education Bills which relate to the public school system, state university system, or community college system should have effective dates which allow for timely coordination with the dates of the respective school years. Often a July 1 effective date is appropriate.

5. Elections laws and laws affecting voting rights Timing is of importance in bills affecting the elections process. Caution should be exercised, particularly with respect to bills taking effect in even-numbered years, to ensure that the effective date chosen is not one which interferes with the elections process. In addition, bills which change voting or elections procedures or which otherwise affect voting rights must, under federal law, be submitted to the Justice Department for preclearance before they may be legally enforced. Because of time considerations involved in completing the elections process, it is suggested by the staff of the Attorney General's Office that such bills be given an effective date of January 1 of the following year, or later.

6. Regulatory or other state agencies Bills which relate to the operation of state agencies or require agencies to implement new regulatory programs or requirements should be delayed long enough for the agency to develop and implement administrative procedures.

7. Remedial acts Bills to correct errors or oversights in existing law should, in nearly all cases, take effect upon becoming a law.

What is the difference between “taking effect” and “becoming a law”?

This is often a confusing distinction, but it is an important one. Section 8 of Article III of the Florida Constitution provides in part that:

> Every bill passed by the legislature shall be presented to the governor for approval and shall become a law if the governor approves and signs it, or fails to veto it within seven consecutive days after presentation. If during that period or on the seventh day the legislature adjourns sine die or takes a recess of more than thirty days, the governor shall have fifteen consecutive days from the date of presentation to act on the bill.

This section tells us that the Governor determines when (and even "if") an act is going to "become a law."

The Legislature, however, usually determines when that "law" shall "take effect"; that is, when it will actually begin to operate, as expressed in the effective date. It is possible for these two events to occur on the same date, which leads us to our next question.

How can a bill be made to take effect at the earliest possible moment?

The effective date of a bill may provide that it shall become operative, or "take effect," at the same time that the Governor permits it to "become a law." Thus, the use of the phrase "This act shall take effect upon becoming a law" will

result in the bill taking effect as soon as possible after its passage. It is not necessary to use the phrase "immediately upon becoming a law."

May separate provisions of an act take effect at different times?

Yes. The effective date may stipulate that certain sections of the act, or, in a proper case, specified provisions or applications of the act, shall take effect at one point in time, and that the remainder shall take effect at a different time. This is occasionally useful when it is desired that a certain requirement or regulation not be in force until a future date, but that the remainder of the bill take effect at a standard time.

The House Bill Drafting Service strongly recommends that a special effective date, applicable to a single section, be placed in directory language which introduces the section to which it relates, rather than in the general effective date at the end of the bill. Such a procedure avoids complications and potential errors which may otherwise result when bills are amended to add, delete, or reorder sections.

The form for such a directory would look like this:

> Section 1. Effective January 1, 2005, section 11.242, Florida Statutes, is amended to read:

The form for the effective date at the end of such a bill should be:

> Section __. Except as otherwise provided herein, this act shall take effect October 1, 2005

The form for the corresponding title provision is “providing effective date**s**.”

What happens if an act fails to become a law until after the effective date provided in it?

This is most apt to happen if the bill specifies an effective date which falls soon after the adjournment of the session. If a bill which provides an effective date of July 1 passes the Legislature on, for example, June 7, it may be several days before the officers of each house sign the bill and present it to the Governor. Assuming that this were to occur on June 17, the Governor would then have 15 days to consider whether or not to veto it. If, in this example, the Governor allows the bill to become a law without signing it, this would occur on July 2, at a time after the effective date provided in the act had already passed.

It has been ruled by the Attorney General that if, by its terms, the effective date does not contemplate this situation, and the specified date passes before the act becomes a law, the effective date must be totally disregarded and the act read as though the effective date provision were not in it. [See: Attorney General's Opinion 067-49 (1967).]

The likelihood of this happening has been diminished since the convening of the regular legislative session has been moved to March.

MISCELLANEOUS PROVISIONS

There are a number of "stock" clauses which, although not essential or even common to all bills, are used often enough to merit discussion here.

"Whereas" clauses Occasionally, it is desirable to recite reasons for the enactment of legislation on the face of the bill itself. Such material usually takes the form of one or more "whereas" clauses which are placed at the beginning of the bill following the title and preceding the enacting clause.

Such clauses do not become part of the official law and are considered as explanatory or clarifying matter only--a sort of built-in committee presentation. They may, however, be considered by the courts in construing legislative intent. **The House Bill Drafting Service strongly recommends that legislative "findings and intent" provisions be written as "whereas" clauses.** Doing so greatly decreases the possibility of future challenge of the law in the courts and subsequent litigation.

Most bills do not have "whereas" clauses. They should be included only when there is a compelling reason to do so. (See the sample resolution on page 103.)

Severability clause Rarely, if ever, is a severability clause necessary. In 1969, the Florida Supreme Court stated that the absence of a severability clause in a statute does not prevent the court from exercising its inherent power to preserve the constitutionality of an act by the elimination of invalid clauses. Conversely, it has been indicated that the presence of a severability clause will

not prevent the court from throwing out the whole act if, in its opinion, to preserve a remainder would produce an unreasonable, unconstitutional, or absurd result.

When used, severability clauses are often observed to be quite lengthy and awkward. For those who insist on using a severability clause, the following short version would probably be as good as any:

> Section__. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Penalty section Chapter 775, Florida Statutes, provides a classified system of uniform penalties under which the penalties for nearly all felonies and misdemeanors are designated by "degree." The penalties for the specific degrees are set forth in ss. 775.082 (imprisonment), 775.083 (fines), and 775.084 (habitual felony offenders), Florida Statutes.

The general misdemeanor penalty is expressed as follows:

> Section__. A person who violates any provision of this section commits a misdemeanor of the [second] degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.

Similarly, the general felony penalty is:

> Section__. ... commits a felony of the [first] degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, Florida Statutes.

Occasionally, it may be desired to impose a fine in an amount greatly different from that provided in the general penalty provision. For example, the state may wish to punish a polluter with only 60 days in the county jail, but by a fine of $5,000. In such a case, the penalty could read:

> Section__. ... commits a misdemeanor of the second degree, punishable as provided in s. 775.082, Florida Statutes, or by fine not exceeding $5,000, or both.

We recommend resistance to variations from uniformity, but if a request embodying a felony penalty, for example, states specifically that no fine for the offense is desired, the language may be expressed:

> Section __. ... commits a felony of the [first] degree, punishable as provided in s. 775.082 or s. 775.084, Florida Statutes.

Appropriation section Language making an appropriation should always include four essential elements: how much, from where, to whom, and for what. An example:

> Section __. There is hereby appropriated from the General Revenue Fund to the Department of Transportation the sum of $1,250,000 for the purpose of carrying out the provisions of this act.

Sometimes, the amount required is not known at the time of drafting. Since all bills which make appropriations are referred to an appropriations committee for study and possible amendment, it is acceptable to leave the decision to the committee by using the following form:

Section __. <u>There is hereby appropriated from the General Revenue Fund to the Department of Transportation an amount sufficient to carry out the purposes of this act.</u>

If the committee approves the bill, it will be amended to provide the specific dollar amount.

<u>Popular Name</u> (formerly "Short Title")

In the past, the use of a "short title" allowed a simplified form of reference to "this act" and was appropriate when an act created a complete new program or otherwise addressed a subject in a comprehensive way. Because the court has determined that a "short title" is part of the title of a bill and therefore establishes the bill's subject, it has become the policy of the House Bill Drafting Service to use "popular name" to describe the name of an act, or a specific section or consecutive sections within an act, in order to make the distinction for the mutual benefit of the Legislature and the court. Examples:

Section 1. This act may be cited as the " _____ Act."

Section 1. Sections 2 – 17 of this act may be cited as the " _____ Act."

The catchline for a section that creates a popular name should read:

888.999 Popular Name.--

The title proviso should read:

providing a popular name;

As in the past, it will not ordinarily be appropriate to designate an act by a popular name if the act addresses disconnected aspects of a subject or if the act both creates new statutes and amends existing statutes.

BILLS WITH SPECIAL REQUIREMENTS

In preparing working drafts for submission to the House Bill Drafting Service, one should keep in mind that there are two types of general bills which have specific requirements uncommon to other bills. These are bills relating to trust funds and bills proposing an exemption from public records or meeting requirements.

Trust fund bills In 1992, the electors of the State of Florida voted to adopt Section 19 of Article III of the Florida Constitution, which relates to the state budgeting, planning, and appropriations processes and which, among other requirements, applies restrictions on the creation of new trust funds, the continuation of existing trust funds, and the duration of all trust funds not specifically exempted from that duration restriction. Bills relating to trust funds are governed by such provisions as follows:

Section 19(f)(1) of Article III of the Florida Constitution specifies that a trust fund may only be created in a separate bill, which must be limited to that purpose only and must pass by a three-fifths vote of the membership of each house of the Legislature. Section 215.3207, Florida Statutes, establishes criteria,

based on the constitutional requirements, for the contents of a bill creating a trust fund. This means that if you have a bill that creates a new program or modifies an existing program and you want to fund it through a new trust fund rather than an existing trust fund, you are required to have two bills to do so--one for the creation or modification of the program and another for the creation of the trust fund itself.

Section 19(f)(2) of Article III of the Florida Constitution requires that each trust fund in existence before the effective date of that provision (November 4, 1992) shall terminate not more than 4 years after that effective date. It also requires that subsequently created trust funds shall terminate not more than 4 years after the effective date of the act authorizing the creation of the trust fund. Sections 215.3206 and 215.3208, Florida Statutes, provide criteria and the schedule for the review of existing trust funds.

Section 19(f)(3) of Article III of the Florida Constitution provides that certain trust funds are exempt from the termination requirements of Section 19(f)(2) of Article III of the Florida Constitution.

Bills that create, re-create, or terminate trust funds or that declare trust funds exempt from termination follow specific patterns established by the House Bill Drafting Service in conjunction with the House appropriations committees. Examples of each may be found in the *Trust Fund Manual*, prepared by the House appropriations staff in the fall of 1994, or, for examples from the most recent legislative session, in the most recent *Laws of Florida*. Because these

patterns have evolved since 1994, it is best to check with the House Bill Drafting Service for the latest versions.

Public records and public meetings exemptions Section 24 of Article I of the Florida Constitution provides that every person has the right to inspect or copy a public record, and that all meetings of collegial public bodies be open to the public. It also authorizes the Legislature to enact exemptions to these requirements upon passage by a two-thirds vote of each house of the Legislature and imposes restrictions on such exemptions. Sections 119.07 and 286.011, Florida Statutes, also address public records and public meeting requirements. In addition, s. 119.15, Florida Statutes, the AOpen Government Sunset Review Act of 1995,@ sets forth restrictions on enactment of such exemptions. Taken together, these provisions require that **a bill proposing an exemption from public records or public meeting requirements must:**

1. Be a SEPARATE GENERAL bill.

2. Be no broader than necessary to accomplish the stated purpose.

3. Include a specific statement of the public necessity justifying the exemption.

4. Include a statement that the exemption is repealed on October 2 of the fifth year after enactment and must be reviewed by the Legislature before the scheduled repeal date.

It is essential to comply with these constitutional and statutory requirements when drafting a bill that creates an exemption.

Often a new public records or public meeting exemption is included within a request for a longer substantive bill, for example, one creating a new regulatory program. Such an exemption would only need to take effect if the program itself takes effect, ***but the exemption must be drafted as a separate bill***, ***with the substantive bill and the exemption bill linked together with contingent effective dates*.**

Following are patterns for the creation of a new public records or public meetings exemption:

Public records

> [Specify clearly the records affected] are [confidential and] exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

In a separate section of the bill, or a separate subdivision of the text in which the exemption is created, set forth the "review and repeal" language:

> [Section, subsection, paragraph, etc.] is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 20__, unless reviewed and saved from repeal through reenactment by the Legislature.

Public meetings

> [Specify clearly the portion of the meeting that is affected] is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

In a separate section of the bill, or a separate subdivision of the text in which the exemption is created, set forth the "review and repeal" language:

> [Section, subsection, paragraph, etc.] is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 20__, unless reviewed and saved from repeal through reenactment by the Legislature.

Always create a new exemption in a discrete statutory unit, such as a new section, subsection, paragraph, or subparagraph. This is necessary because s. **119.15,** Florida Statutes, requires that the exemption be reviewed by the Legislature after 5 years and either repealed or reenacted, and it is important to be able to identify the exemption in a statutory unit that can be easily reviewed and reenacted or repealed.

When submitting a drafting request for a public records or public meetings exemption bill**, *it is essential that you include a statement of public necessity with the request*.** Logic would dictate that the proponent of a new public records or public meetings exemption is in the best position to supply the justification for a new exemption. Though House Bill Drafting will draft a public necessity statement when supplied with the information needed to do so, House Bill Drafting should not be put in the position of conceiving a rationale for a new public records exemption. Failure to include a public necessity statement or the information necessary to draft the statement will only delay the completion of such a drafting request.

Draft the “public necessity” statement with great care. AIdentifiable public purposes@ that can justify an exemption are listed in s. 119.15(4)(b), Florida Statutes, and can be used as the basis for such a statement. Make certain that

the public necessity statement is narrowly tailored to the exemption that is being proposed. Public necessity statements in bills of similar subject matter that were introduced in previous sessions can often provide direction when preparing a public necessity statement for a newly proposed exemption.

For more detailed information regarding these exemptions, contact the staff of the Governmental Operations Committee or the House Bill Drafting Service.